

§ 541.0

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APPENDIX TO PART 541—OCCUPATIONAL INDEX

AUTHORITY: 29 U.S.C. 213; Pub. L. 101-583, 104 Stat. 2871; Reorganization Plan No. 6 of 1950 (3 CFR, 1945-53 Comp., p. 1004); Secretary's Order No. 13-71 (36 FR 8755).

SOURCE: 38 FR 11390, May 7, 1973, unless otherwise noted.

Subpart A—General Regulations

§ 541.0 Terms used in regulations.

(a) *Administrator* means the Administrator of the Wage and Hour Division, U.S. Department of Labor. The Secretary of Labor has delegated to the Administrator the functions vested in him under section 13(a)(1) of the Fair Labor Standards Act.

(b) *Act* means the Fair Labor Standards Act of 1938, as amended.

§ 541.1 Executive.

The term *employee employed in a bona fide executive * * * capacity* in section 13(a) (1) of the Act shall mean any employee:

(a) Whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department of subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section: *Provided*, That this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he is employed; and

(f) Who is compensated for his services on a salary basis at a rate of not less than \$155 per week (or \$130 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or

other facilities: *Provided*, That an employee who is compensated on a salary basis at a rate of not less than \$250 per week (or \$200 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all the requirements of this section.

[38 FR 11390, May 7, 1973, as amended at 40 FR 7092, Feb. 19, 1975]

EFFECTIVE DATE NOTE: Paragraph (f) in § 541.1 was revised at 46 FR 3013, Jan. 13, 1981. In accordance with the President's Memorandum of January 29, 1981 (46 FR 11227, Feb. 6, 1981), the effective date was postponed indefinitely at 46 FR 11972, Feb. 12, 1981.

The text of paragraph (f) set forth above remains in effect pending further action by the issuing agency. The text of the postponed regulation appears below.

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* * * * *

(f) Who is compensated for his services on a salary basis at a rate of not less than \$225 per week beginning February 13, 1981 and \$250 per week beginning February 13, 1983 (or \$180 per week beginning February 13, 1981 and \$200 per week beginning February 13, 1983. If employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities: *PROVIDED*, That an employee who is compensated on a salary basis at a rate of not less than \$320 per week beginning February 13, 1981 and \$345 per week beginning February 13, 1983 (or \$260 per week beginning February 13, 1981 and \$285 per week beginning February 13, 1983, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all the requirements of this section.

§ 541.2 Administrative.

The term *employee employed in a bona fide * * * administrative * * * capacity* in section 13(a)(1) of the Act shall mean any employee:

(a) Whose primary duty consists of either:

(1) The performance of office or non-manual work directly related to management policies or general business operations of his employer or his employer's customers, or

(2) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c)(1) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined in the regulations of this subpart), or

(2) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or

(3) Who executes under only general supervision special assignments and tasks; and

(d) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (c) of this section; and

(e)(1) Who is compensated for his services on a salary or fee basis at a rate of not less than \$155 per week (\$130 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, or

(2) Who, in the case of academic administrative personnel, is compensated for services as required by paragraph (e)(1) of this section, or on a salary basis which is at least equal to the entrance salary for teachers in the school system, educational establishment, or